IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2)(b)
Description of case

Writ Petition No. 1130 of 2003 (M/B)

Smt. Moliya Devi and another……. Petitioners.

Versus

A.D.J. And another ……. Respondents.

Date of decision: 30, November, 2004

For the approval of:

Hon'ble Chief Justice P.C. Pant.

- Whether the order/judgment should be sent to the reporters for reporting? (Yes)

- Whether the reporters be allowed to see the judgment? (Yes)

Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1130 of 2003 (M/S)

1. Smt. Moliya Devi
W/o Late Shri Moti lal.

2. Km. Beena
D/o Late Shri Moti lal.
All R/o 6/3 Old Dalan wala
(old no. 3/2 Old Dalanwala)
Dehradun ……..… Petitioners.

Versus

1. Additional District Judge
4th Fast Track Court
Dehradun.

2. Shri Sriram Agarwal
S/o Late Shri Sarnimal
R/o 1 Old Dalanwala
Dehradun …….. Respondents.

Mr. Anurag Bisaria/Tehmina Punvani
Learned counsel for the petitioners.
Mr. B.P. Nautiyal, learned counsel
for the respondent no. 2.

Hon'ble Prafulla C. Pant, J.

By means of this writ petition, moved under Article 226 of the Constitution of India, the petitioners have challenged the order dated 24.09.2003, passed by Additional District Judge/4th Fast Track Court, Dehradun, whereby rent appeal no. 100 of 2002 has been allowed.

2) Brief facts of the case, an narrated in the writ petition, are that the petitioners alongwith Anil Kumar, are tenants in house-6/3 Old Dalanwala (Old No. 3/2 Old Dalanwala), Dehradun from the time of late Moti Lal (husband of the petitioner no. 1 and father of petitioner no. 2). It is alleged that the area of the room is 12.6 feet X 11.6 feet and the rate of rent is Rs. 70/- Per month. Respondent no. 2, the land lord of the house in question, moved an application on 28.06.2001 under section 21 (1), (a) of U.P. Act, 13 of 1972 for release of the house in question. The said application was registered as P.A. case No. 57 of 2001. The land lord alleged that he needs the house for the business of his son, Shri Shravan Kumar. It is further alleged by the landlord, before the prescribed authority that he has five daughters and when they visit him, he needs space to accommodate them. The landlord (respondent no. 2) is in possession of two rooms and one shop, apart from the Verandah and toilet. The petitioners contested the application, denying the allegations of the application of the landlord and it was alleged that the tenant have no alternative accommodation. After taking the evidence in the form of affidavits and hearing the parties, learned prescribed authority, vide its order dated 05.10.2002 (copy Annexure-10 to the writ petition), rejected the application. Aggrieved by said judgment and order, respondent no. 2, the landlord preferred rent control appeal no. 100 of 2002, which was after hearing the parties, allowed by a Additional District Judge/4th Fast Track Court, Dehradun, vide his judgment and order dated 24.09.2003 (copy Annexure-1 to the writ petition). During the pendency of the appeal, respondent

no. 2 filed an affidavit dated 22.07.2003, stating that the tenant was allotted one economically weaker section flat by Mussoorie Dehradun Development Authority, Dehradun. Believing the said evidence, appeal appears to have been allowed by the learned Additional District Judge, Dehradun. The petitioners, aggrieved by order dated 24.09.2003, passed by the respondent no. 1, have filed this writ petition.

4) I heard learned counsel for the parties and perused the affidavit, counter affidavit along with the annexures annexed thereto.

5) The short question for consideration before this court is whether the impugned order dated 24.09.2003, suffers from any illegality whereby the appeal for the release application was allowed. For that purpose, this court has to see if the learned appellate court has not erred in law in reaching to the conclusion that the need of the landlord was genuine and the comparative hardship was also in his favour.

6) Admittedly, respondent no. 2 is the landlord and the petitioners along with Shri Anil Kumar, are the tenants of the accommodation in question. There is no dispute as to the rate of rent and size of the room in question. Dispute relates to the bonafide need of the landlord and as to the competitive hardship between the parties. Before further discussions, it is pertinent to mention here Explanation to section 21 (1) of U.P. Act, 13 of 1972 (applicable in Uttaranchal) which reads as under:

“Explanation:- In the case of a residential building-

i) Where the tenant or any member of his family [who has been normally residing with him or is wholly dependent on him] has built or has otherwise acquired in a vacant state or has got vacated after acquisition a residential building in the same city, municipality, notified area or town area, no objection by the tenant against an application under this sub-section shall be entertained.

[Note- For the purposes of this clause a person shall be deemed to have otherwise acquired a building, if he is occupying a public building for residential purposes as a tenant, allottee or licensee].

7) Learned appellant court has given the categorical findings that Anil Kumar (son of the petitioner no. 1 and brother of the petitioner no. 2), has purchased as residential house from Mussorie Dehradun Development Authority on 23.12.1988 for Rs. 18,000. From the record, it is very clear that after the death of Moti Lal, the original tenant, his widow, Smt. Moliya Devi (petitioner no. 2), his daughter Kumari Beena (petitionerno. 2) and his son Shri Anil Kumar, inherited the joint tenancy. That being so, acquisition of a building by one of the three, attracts the explanation quoted above. In the present petition, the present petitioners have not denied the fact that Anil Kumar has acquired the house in Dalanwala from Mussorrie Dehradun Development Authority. Not only this, from the date the petitioners, made their appearance before the said authority. As such, there appears no illegality in the impugned judgment and order relating to the finding as to

the bonafide need and comparative hardship in favour of the landlord. Otherwise also, in view of the big family of the landlord, the need shown by him is established on the record.

8) Learned counsel for the petitioner, argued that merely for the reason that Anil Kumar has got accommodation within the limits of Nagar Palika, his mother and sister cannot be thrown away from the house in question. Had it been a co-tenancy, I would have appreciated the above submission. But it is a case of joint tenancy, inherited from the original tenant as such acquisition of house by one of the joint tenants is sufficient to oust.

9) In view of the above discussion, I see no illegality in the impugned judgment and order passed by respondent no. 1. Therefore, the writ petition is liable to be dismissed. Accordingly, the writ petition is dismissed. No order as to costs. Stay order, if any, stands vacated.

(Prafulla C. Pant, J.)

Dt: November 30, 2004

Sweta